

### **REMARKS**

Reconsideration and withdrawal of the rejections of the application are requested in view of the amendments and remarks presented herein, which place the application into condition for allowance.

#### **I. Status Of Claims And Formal Matters**

Claims 69-74, 76-105, 145, 156, 162-181, and 193-202 were currently pending in the present application. Claims 69-73 are withdrawn from consideration. Claims 74 and 76-90 have been cancelled herein. Accordingly, claims 69-73, 91-105, 126-128, 145, 156, and 162-202 are currently pending in this application.

No new matter is added.

The Examiner has alleged that the current pending claims are not entitled to benefit of the priority date of October 31, 2002 of provisional application 60/422,755. The Office Action asserts that the present application claims a method of detecting WNV infection by testing for NS5 protein, and that the NS5 protein is not disclosed in 60/422,755. Applicants maintain the position that the priority date of the present claims should be **October 31, 2002**, not June 6, 2003.

The Examiner is thanked for withdrawing the rejections of claims under 35 U.S.C. § 112.

The Examiner is thanked for withdrawing the rejections of claims 91-105, 126-128, 145, 156, and 162-202 under 35 U.S.C. § 103.

It is submitted that the claims are patentably distinct over the prior art and that these claim are and were in full compliance with the requirements of 35 USC §112. The amendments of the claims herein are not made for the purpose of patentability within the meaning of 35 USC §§ 101, 102, 103 or 112; but rather, the amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the amendments should not give rise to any estoppel, as they are not narrowing amendments.

#### **II. The Rejections Under 35 U.S.C. §103 Are Overcome**

Claims 74 and 76-90 are rejected under 35 USC §103(a) as allegedly being obvious over Wang et al. ("Wang"), Valdes et al. ("Valdes"), Mandy et al ("Mandy"), Scaramozzino et al

(“Scaramozzino”), and McDonell et al (“McDonell”). Claims 74 and 76-90 have been cancelled thereby obviating the rejection.

Accordingly, reconsideration and withdrawal of the rejection of claims 74 and 76-90 is respectfully requested.

**III. Double Patenting Is Held In Abeyance**

The Office Action provisionally rejects claims 74-105, 126-128, 145 and 156, and 162-202 under judicially created doctrine of double patenting over claims 1-9, 13-21, 24-35 and 56-57 of copending Application No. 10/839,442. Claims 74 and 76-90 have been cancelled thereby obviating the rejection in part.

The issue of whether there is indeed double patenting is contingent upon whether the remarks herewith are indeed considered and entered; and, if so, whether the Examiner believes there is overlap with claims ultimately allowed in the application.

Accordingly, reconsideration and withdrawal of the double patenting rejection, or at least holding it in abeyance until agreement is reached as to allowable subject matter, is respectfully requested.

**REQUEST FOR INTERVIEW**

If any issue remains as an impediment to allowance, an interview with the Examiner is respectfully requested, prior to issuance of any paper other than a Notice of Allowance; and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application, reconsideration and withdrawal of the rejections of and objections to the application, and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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